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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST OF CA. S.J.

ADR

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C08 02532

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Case No. 08-02354
COMPLAINT AND DEMAND FOR
JURY TRIAL (Unlawful Debt
Collection Practices)

CREDIT CONSULTING SERVICES, INC., a corporation; HERENDEEN & BRYAN, a professional corporation; and DOES 1 through 10 inclusive,

Defendants.

I. INTRODUCTION

1

practices.

II. JURISDICTION AND VENUE

2. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28 U.S.C. §1337. Supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. §1367. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the Defendants transact business here and the conduct complained of occurred here.

III. PARTIES

3. Plaintiff SANDRA BAXTER is a natural person residing in California.

4. Defendant CREDIT CONSULTING SERVICES ("CCS") is a California corporation doing business of collecting consumer debts owed to another, with its principal place of business located at 201 John St., Suite E; Salinas, CA 93901.

5. Defendant HERENDEEN & BRYAN ("H&B") is a professional corporation regularly engaged in attempting to collect debts owed to another through litigation in this state; its principal place of business is 119 Cayuga Street; Salinas, CA 93902.

6. Defendants are all engaged in the collection of debts from consumers using the mail and telephone and regularly attempt to collect consumer debts alleged to be due to another. Defendants are "debt collectors" as defined by the FDCPA, 15 U.S.C. §1692a(6), and by the Rosenthal Act, California Civil Code 1788.2(c).

7. The true names and capacities, whether individual, corporate (including officers and directors thereof), associate or otherwise of Defendants sued herein as DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes, and alleges that each Defendant designated as a DOE is involved in or is in some manner responsible as a principal, beneficiary, agent, co-conspirator, joint venturer, alter ego, third party beneficiary, or otherwise, for the agreements, transactions, events and/or acts hereinafter described, and

1 thereby proximately caused injuries and damages to Plaintiff. Plaintiff requests that when the
2 true names and capacities of these DOE Defendants are ascertained, they may be inserted in
3 all subsequent proceedings, and that this action may proceed against them under their true
4 names.

5 8. Plaintiff is a "consumer" as defined by the FDCPA, 15 U.S.C. § 1692a(3).

6 9. The purported debt that Defendants attempted to collect from Plaintiff was a
7 "debt" as defined by the FDCPA, 15 U.S.C. § 1692a(5).

8 10. Plaintiff is a "debtor" as defined by the Rosenthal Act, California Civil Code
9 § 1788.2(h).

10 11. The purported debt which Defendants attempted to collect from Plaintiff was a
11 "consumer debt" as defined by the Rosenthal Act, California Civil Code § 1788.2(f).

12 IV. FACTUAL ALLEGATIONS

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14 12. The FDCPA was enacted to "eliminate abusive debt collection practices by debt
15 collectors, to insure those debt collectors who refrain from using abusive debt collection
16 practices are not competitively disadvantaged, and to promote consistent state action to
17 protect consumers against debt collection abuses."

18 13. At a time unknown, CSS acquired information regarding an alleged debt (the
19 "Baxter Debt") on a hospital bill in Plaintiff's name which originated with George L. Mee
20 Memorial Hospital ("the Hospital").

21 14. At a time unknown, CCS acquired information regarding an alleged debt ("the
22 D'Auteuil Debt") on a hospital bill in the name of Rocky D'Auteuil which originated with
23 the Hospital.

24 15. Plaintiff has never been married to Mr. D'Auteuil nor has she ever agreed to
25 assume responsibility for any of his debts.

26 16. Originally, CCS would send a dunning letter to Plaintiff to collect on the Baxter
27 Debt and then send a separate dunning letter to Mr. Dauteuil to collect on the D'Auteuil
28 Debt.

1 17. When Mr. D'Auteuil stopped making payments on the D'Auteuil Debt, CCS
2 added the D'Auteuil Debt to Plaintiff's account.

3 18. At a time unknown, CCS began calling Plaintiff to collect the Baxter Debt and
4 the D'Auteuil Debt.

5 19. CCS called with such frequency and persistence as to constitute harassment.

6 20. CCS reported credit information to a credit bureau that it knew or should have
7 know was false.

8 21. Plaintiff explained to CCS that she had never been married to Mr. D'Auteuil and
9 was not responsible for his bills; CCS ignored Plaintiff and continued to attempt to collect the
10 D'Auteuil Debt from Plaintiff.

11 22. On June 28, 2007, CCS sent a letter to Plaintiff demanding payment of both the
12 Baxter Debt and the D'Auteuil Debt.

13 23. On September 20, 2007, Defendants filed suit in the Superior Court of
14 California, County of Monterey, Case No. M86474 (the ACTION) and named Plaintiff as the
15 only defendant.

16 24. The ACTION sought to collect the Baxter Debt and the D'Auteuil Debt from
17 Plaintiff.

18 25. The complaint in the ACTION falsely stated the amount of the debt.

19 26. During discovery in the ACTION Defendants admitted that they were
20 attempting to collect money on a debt that was not incurred by Plaintiff.

21 27. As a result of the acts alleged above, Plaintiff suffered great stress, worry, and
22 emotional distress. Further, Plaintiff was forced to incur legal expenses in defense of the
23 ACTION.

24 25 **V. FIRST CLAIM FOR RELIEF**

26 **(Against all Defendants for Violation of the FDCPA)**

27 28. Plaintiff repeats and realleges and incorporates by reference all of the foregoing
28 paragraphs.

1 29. Defendants violated the FDCPA. Defendants' violations include, but are not
2 limited to, the following actions taken against the Plaintiff:

- 3 (a) Defendant CCS violated 15 U.S.C. § 1692d by engaging in conduct
4 the natural consequence of which is to harass, oppress, or abuse
5 Plaintiff in connection with the collection of the alleged debt;
- 6 (b) Defendant CCS violated 15 U.S.C. § 1692d(5) by causing the phone
7 to ring or engaging a person in telephone conversations repeatedly
8 with the intent to harass, oppress, and abuse the Plaintiff in connection
9 with the collection of the Debt;
- 10 (c) The Defendants violated 15 U.S.C. § 1692e by using false, deceptive,
11 or misleading representations or means in connection with the
12 collection of a debt;
- 13 (d) The Defendants violated 15 U.S.C. § 1692e(2)(A) by giving the false
14 impression of the character, amount or legal status of the alleged debt;
- 15 (e) The Defendants violated 15 U.S.C. § 1692e(8) by communicating or
16 threatening to communicate credit information which is known or
17 which should be known to be false, including the failure to
18 communicate that a disputed debt is disputed;
- 19 (f) The Defendants violated 15 U.S.C. § 1692e(10) by using a false
20 representation or deceptive means to collect or attempt to collect any
21 debt or to obtain information regarding a consumer;
- 22 (g) The Defendants violated 15 U.S.C. § 1692(f) by using unfair or
23 unconscionable means to collect or attempt to collect a debt;
- 24 (h) The Defendants violated 15 U.S.C. § 1692(f)(1) by attempting to
25 collect an amount not authorized by the agreement that created the
26 debt or permitted by law;

27 30. As a result of the above violations of the FDCPA, Defendants are liable to the
28 Plaintiff for Plaintiff's actual damages, statutory damages, and attorney's fees and costs

1 pursuant to 15 U.S.C. §1692k.

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3 **VI. SECOND CLAIM FOR RELIEF**

4 **(Against all Defendants for Violation of the Rosenthal Act)**

5 31. Plaintiff repeats, realleges and incorporates by reference all of foregoing
6 paragraphs.

7 32. Defendants violated the Rosenthal Act, by including but not limited to, the
8 following:

- 9 (a) Defendant CCS violated California Civil Code §1788.11(d) by
10 causing a telephone to ring repeatedly or continuously to annoy the
11 person called;
12 (b) Defendant CCS violated California Civil Code §1788.11(e) by
13 communicating with the Plaintiff with such frequency as to be
14 unreasonable and to constitute an harassment to the Plaintiff under the
15 circumstances;
16 (c) The Defendants violated California Civil Code §1788.17 by failing to
17 comply with the FDCPA as alleged above.

18 33. As a proximate result of Defendants' violations enumerated above, Plaintiff has
19 been damaged in amounts which are subject to proof.

20 34. Defendants' violations of the Rosenthal Act were willful and knowing.
21 Defendants are therefore liable to Plaintiff for Plaintiff's actual damages, statutory damages,
22 and attorney's fees and costs pursuant to California Civil Code §1788.30.

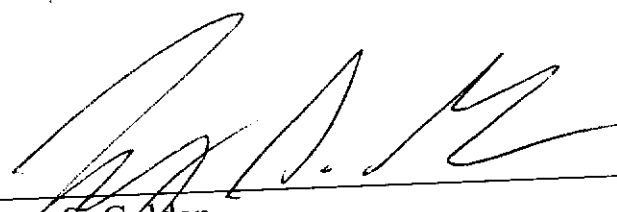
23
24 WHEREFORE, Plaintiff respectfully requests that judgment be entered against
25 Defendants and each of them for the following:

- 26 A. Actual damages;
27 B. Statutory damages pursuant to 15 U.S.C. §1692k and California Civil Code
28 §1788.30(a).

1 C. Costs and reasonable attorney's fees pursuant to 15 U.S.C. §1692k and
2 California Civil Code §1788.30(b) and §1788.30(c)

3 D. For such other and further relief as the Court may deem just and proper.

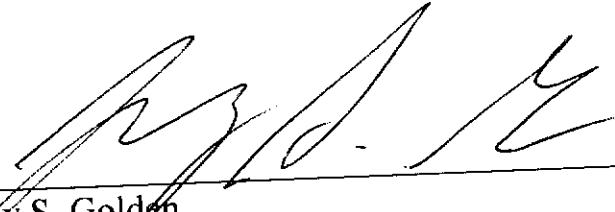
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5 Date: 5/15/08

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8 _____
9 Jeremy S. Golden
10 Attorney for Plaintiff

11 **DEMAND FOR JURY TRIAL**

12 Please take notice that Plaintiff demands trial by jury in this action.

13 Date: 5/15/08

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16 _____
17 Jeremy S. Golden
18 Attorney for Plaintiff
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JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

SANDRA BAXTER

DEFENDANTS

CREDIT CONSULTING SERVICES, INC., a corporation; HERENDEEN & BRYAN, a professional corporation; and DOES 1 through 10 inclusive

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jeremy S. Golden (SBN 228007)
Law Offices of Eric F. Fagan
2300 Boswell Rd., Suite 211
Chula Vista, CA 91914 Tel: 619-656-6656; Fax: 775-898-5471

Attorneys (If Known)

C08 02532

RS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- PTF DEF
Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury — Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Escheat
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury — Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 630 Liquor Laws	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influences and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	SOCIAL SECURITY	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract		PRISONER PETITIONS	LABOR	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	CIVIL RIGHTS	Habeas Corpus:	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 530 General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act		<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 555 Prison Condition	IMMIGRATION	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other		<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 950 Constitutionality of State Statutes
			<input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1692 Various violations of the Fair Debt Collections Practices Act.

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

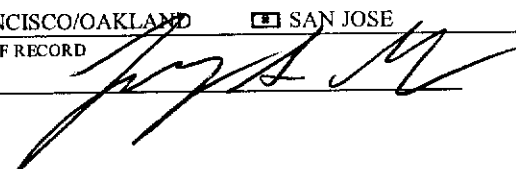
(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND☒ SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

5/16/08



JS 44 Reverse (Rev. 12/07)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.